

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

PATRICK CHANEY,

Plaintiff,

v.

JEREMY HERD, et al.,

Defendants.

Case No. 7:21-cv-01029-AMM-NAD

MEMORANDUM OPINION

The magistrate judge entered a report and recommendation on January 18, 2024, recommending the motion for summary judgment filed by defendants Jeremy Herd, Greg Carr, and Justin White, Doc. 38, be granted. Doc. 47. On February 5, 2024, plaintiff Patrick Chaney filed a “Notice of Appeal,” Doc. 48, which the court construes as objections to the magistrate judge’s report and recommendation.¹

Mr. Chaney objects to the magistrate judge’s factual finding that the use of chemical agents was precipitated by jail inmates rioting. Doc. 48 at 1. In his unsworn objections, Mr. Chaney argues that order had been restored before Mr. Herd used the chemical agents, rendering their use unnecessary. *Id.* Procedurally, an argument raised for the first time in an objection to a magistrate judge’s report and recommendation does not require the district court to consider it. *Williams v. McNeil*,

¹ See Fed. R. Civ. P. 72(b).

557 F.3d 1287, 1290-92 (11th Cir. 2009) (holding that “a district court has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate judge”).


Even if Mr. Chaney had timely raised his claim that no force was necessary by the time the chemical agents were used, Mr. Chaney repeatedly asserted that in an attempt to “scurry away” from the effects of the chemical spray, he slipped and fell. Doc. 19 at 5; Doc. 46 at 1. Without a showing that his injuries resulted from the chemical agents, Mr. Chaney cannot establish a violation of his constitutional rights. *See Kingsley v. Hendrickson*, 576 U.S. 389, 395-96 (2015) (distinguishing between deliberate uses of force and unintentional injuries); *Patel v. Lanier Cnty., Ga.*, 969 F.3d 1173, 1184 (11th Cir. 2020) (“We don’t think the *Kingsley* Court meant to suggest that unforeseeable injuries can transform a reasonable application of force into an excessive one.”).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the plaintiff’s objections, the court **OVERRULES** the objections, **ADOPTS** the magistrate judge’s report, and **ACCEPTS** the recommendation. The court finds that there are no genuine issues of material fact and that the defendants are entitled to judgment in their favor as a matter of law. Accordingly, the court shall **ORDER** that the motion for

summary judgment of defendants Jeremy Herd, Greg Carr, and Justin White, Doc. 37, be **GRANTED**.

A Final Judgment will be entered.

DONE and **ORDERED** this 27th day of February, 2024.



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE